IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Writ Petition No.10701 of 2004

Shri Prabhakar Laxman Vaidya Petitioner
Vs.
Khed Nagar Palika Respondent

Mr.P.S.Dani for petitioner.

CORAM: B.H.MARLAPALLE,J.

June 12, 2006.

P.C.

. Heard Mr.Dani, the learned counsel for the petitioner who is the co-owner of the plots bearing Survey Nos.633 to 635 in Ward No.10 of Khed, Dist. Ratnagiri. It appears that the petitioner was granted permission for construction on Plot Nos.633 and 634 on 27/3/2002 and he was to submit the consent of his nephew i.e. Dilip Kashinath Vaidya who was the co-owner of the suit property. The petitioner failed to do so and, therefore, the Respondent no.1 - Municipality issued a notice on 3/10/2003 calling upon the petitioner to demolish the structure put up by him, within 30 days from the said notice. This notice came to be challenged in Regular Civil Suit No.57 of 2003 and the learned Civil Judge, Junior Division at Khed was pleased to hold by his judgment and order dated 17/1/2004 that he had no jurisdiction

to entertain the suit in view of the provisions of Section 149 of the Maharashtra Regional and Town Planning Act, 1966. The petitioner, therefore, went in appeal before the District Court and it was registered as Civil Appeal No.9 of 2004. The appeal has also been dismissed on 29/11/2004 by the learned Addl. District Judge at Khed and hence this petition.

. There is no dispute that building permission was specifically on the condition that the petitioner would submit the co-owner's consent letter and he failed to do so. On the other hand the co-owner raised an objection with the Municipality and, therefore, the impugned notice was issued for demolition. Section 149 of the MRTP Act reads as under:

> "149. Save as otherwise expressly provided in this Act, every order or direction issued by the State Government or order passed or notice issued by any Regional Board, Planing Authority or Development Authority under this Act shall be final and shall not be questioned in any suit or other legal proceedings."

It provides the bar for entertaining any suit in as much as the notice issued by the planning authority

shall be final and shall not be questioned in any suit or other legal proceedings. The trial Court was thus incompetent to entertain the suit and the petitioner had the remedy of either appearing before the Municipal Council with the consent letter of the nephew or seek for time to submit such a consent letter. In the alternative he had right to file suit to get his share determined in the common property.

. The concurrent findings recorded by both the Courts below on the basis of the provisions of Section 149 of the MRTP Act do not call for any interference at the hands of this Court and, therefore, the petition is rejected summarily.

. In case the notice for demolition has not been acted upon even now, the petitioner is at liberty to file his reply and may submit consent letter of his nephew for consideration of the Municipality and is granted four weeks time to do so.

(B.H.MARLAPALLE,J.)